

## ***Law Office of Edward V. Hanlon, Chartered***

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November 14, 2023

Anthony J. Hood, Chair  
District of Columbia Zoning Commission  
441 4th Street, NW, Suite 200S,  
Washington, DC 20001  
Email: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Re: ***Zoning Commission Case 23-02***

Hearing Date: November 20, 2023

*Flagrant Violation of the Public Notice Requirements of the Zoning Code*<sup>1</sup>

Dear Chair Hood:

I am writing to bring to your immediate attention the flagrant violation of the mandatory notice requirements of the Zoning Code found at 11 DCMR, Subtitle Z, §402.2, for the upcoming November 20, 2023 hearing in Zoning Case No. 23-02.

I appeal to you and the other Commissioners to act fairly and obey the law as written. I hope the Commission will do the right thing and *properly* renote the November 20, 2023 hearing. *People have a right to be told they can seek party status. The Commission has the legal obligation to tell them.*

I assert to you now that the defect in the Notice is not “waivable”. I further assert that your inaptly named “Good Neighbor Policy” has been wrongly put forward repeatedly with the actual effect of depriving the citizens of the District of Columbia of their basic legal rights to a contested hearing and has no place as any forlorn attempt to cure the Notice defect in this case.

I further assert that the Commission’s Notices of Public Hearings and Public Meetings are ***repeatedly defective*** and cause great harm to the rights of DC’s citizens. The Commission’s attempts to set down map amendment cases filed by the city as rule-making cases rather than contested cases has caused *hundreds of thousands of square feet of prime public land, worth tens of millions of dollars, to be illegally upzoned* to the harm and detriment of the people of the District of Columbia.

The Notice for the November 20, 2023 Hearing in Case No. 23-02 is another example of a seriously defective Public Notice, which the Commission still has time to correct.

**The Commission failed to include in its Public Notice for this case the mandatory language that members of the public have the right to seek to participate as parties in this case and list in the Notice the “requirements for participation as a party” as required by the Commission’s own regulations.** 11 DCMR, Subtitle Z, §402.2 states for contested hearings states:

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<sup>1</sup> Complaints are being filed with other agencies and investigative bodies with a request to open investigations of the Zoning Commission. This present case is only one of a series of improperly or illegally conducted zoning hearings. On November 13, 2023 the *Office of Open Government* opened an investigation into the Commission’s failure to give public notice in the DC Register of the Commission’s November 9, 2023 Public Meeting in ZC Case No. 23-25 (“Chevy Chase”).

“Each notice of public hearing **shall include**...

(g) **The requirements for participation as a party.**”

The official “**DC Zoning Handbook**, *A guide to the official Zoning Regulations of 2016*” states when interpreting these Zoning Regulations that

“The word “shall” is mandatory and not discretionary.”

<https://handbook.dcoz.dc.gov/>; <https://handbook-dcgis.hub.arcgis.com/pages/definitions>

Including “The requirements for participation as a party” in the Public Notice for the November 20, 2023 Commission Hearing published in the DC Register and mailed to property owners was “mandatory and not discretionary” and cannot be waived by this Commission.

Participating as a party confers very important rights on a person or organization.

The DC *Administrative Procedures Act* § 2–509. Contested Cases, states in part:

(b) In contested cases ...the proponent of a rule or order shall have the burden of proof ... ***Every party shall have the right to present*** in person or by counsel his case or defense by *oral and documentary evidence*, to ***submit rebuttal evidence***, and to ***conduct such cross-examination*** as may be required for a full and true disclosure of the facts...

This Commission has no authority to waive any provision of the APA. *See* Subtitle Z, §101.3 Further, the Commission’s own regulations also confer similar important rights on a party. *See* Subtitle Z §403.7

The below language, “**How to participate as a party**” which the Commission includes in every other Public Notice of a Contested Hearing, the Commission left out of the Public Hearing Notice for this case. For example, the below is copied from the Public Notice for the June 1, 2023 Contested Hearing in Case No. 22-34, Berean Baptist Church, a Map Amendment case, *explaining how to participate as a party, listing a party’s rights, clearly explaining the requirements for participation including filing Form 140 and clearly stating there is a **14 Day deadline** to apply for Party Status:*

**How to participate as a party.**

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact OZ at [dcoz@dc.gov](mailto:dcoz@dc.gov) or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application**, a copy of which may be downloaded from OZ’s website at: <https://app.dcoz.dc.gov/Help/Forms.html>. This form may also be obtained from OZ at the address stated below.

The language above from the Berean Baptist Church case specifically complies with 11 DCMR, Subtitle Z, §402.2 but the language in the Notice in this case specifically does not.

Subtitle Z, §402.12 states “A technical defect in the notice of public hearing that is minor in nature shall not deprive the Commission of jurisdiction over the case.”

But, the language at issue here was

1. Mandatory to include in the Notice not discretionary under Subtitle Z, §402.2
2. Party status is unique and confers important rights, including the right to cross-examine other witnesses, including specifically the Office of Planning witnesses. This ***right to cross-examine*** witnesses for the Applicant is unique to Party Status and is in no way a “minor” right as the APA and substantial case law make clear.
3. The defect is also not “technical”. When a defect affects the substantial rights of a party, the defect cannot be said to be technical or “harmless error”. Failing to apprise hundreds of neighbors to this property of their right to be a party to this case and the deadlines for doing so, as mandated by the Commission’s own regulations, is no way “harmless” “technical” error in the notice.

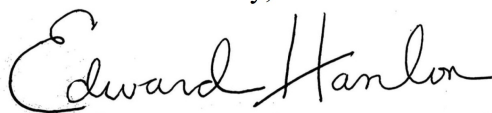
There is no justification for treating this case differently from all other similarly situated cases by deliberately deciding not to include the standard party language the Commission includes in ***every other contested hearing Notice*** it issues. Indeed, a significant Equal Protection issue is created under these circumstances.

There is also very high public interest in this case. ***The expectation is many more people would apply for Party Status, if they knew they could and what the requirements do to so were.*** At issue are 2 acres of prime public land, worth millions of dollars and which, depending on whether upzoning takes place, tens of millions of dollars in construction, up to 650 apartments built and the temporary or permanent relocation of the Third District Police headquarters, fire station and EMS. The neighborhood and wider community effects are major and people have a right to be told they can seek party status.

Accordingly, I ask this Commission to withdraw the hearing notice for November 20, 2023 and, if the Applicant wishes to proceed, to re-issue an appropriate hearing notice for this contested case with standard language conforming with the mandatory Notice requirements of Subtitle Z, §402.2.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Edward Hanlon". The signature is written in a cursive, flowing style with a large initial "E".

Edward Hanlon

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